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**MAY 15 2006**

In re Application of  
Makoto KITABATAKE  
Application No. 10/002,913  
Filed: October 23, 2001  
For: SEMICONDUCTOR ELEMENT

DECISION ON PETITION

This is a decision on the petition filed March 17, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **GRANTED**.

A Notice of Allowance and Fee(s) Due (Notice of Allowance) was mailed on October 20, 2004, setting a three-month period of response. The application became abandoned for failure to pay the issue fee.

Petitioner states that the Notice of Allowance was not received by applicant's representative and attests to the fact that a search of the file and docket records indicates that the Notice of Allowance was not received. The petition is accompanied by a copy of the docket record where the Notice of Allowance would have been entered had it been received and docketed and a declaration by Jodi Gandel-Klein, the Docketing Supervisor.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the Notice of Allowance and Fee(s) Due was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Applicant has provided the required statement attesting to the fact that a search of the file and docket records indicates that the Notice of Allowance was not received. Further, applicant has provided a copy of the docket record where the non-received Notice of Allowance would have been received had it been received and docketed.

Since applicant has made the requisite showing required under M.P.E.P §711.03(c), the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support staff for re-mailing the Notice of Allowability and the Notice of Allowance and Fee(s) Due. The period for response set therein will be reset to expire three months from the date these Notices are remailed. Extensions of this time are NOT available under 37 C.F.R. §1.136(a).

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.

A handwritten signature in black ink, appearing to read 'Sharon A. Gibson', written over a horizontal line.

Sharon A. Gibson, Director  
Technology Center 2800  
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